

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL L. FIELDS and U.S. POSTAL SERVICE,
VEHICLE MAINTENANCE CENTER, Atlanta, GA

*Docket No. 98-2015; Submitted on the Record;
Issued October 4, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective November 25, 1996.

Appellant, a tool and parts clerk, filed a notice of occupational disease alleging that chemical exposures in the performance of duty affected her central nervous system. The Office accepted appellant's claim for chemical hypersensitivities on July 14, 1993 as well as toxic exposure to petroleum products and an episode of pancreatitis from April 17 to August 12, 1994. The Office entered appellant on the periodic rolls on August 1, 1994.

By decision dated November 25, 1996, the Office terminated appellant's compensation benefits finding that the injury-related disability had ceased. Appellant requested reconsideration on November 6, 1997 and by decision dated March 18, 1998, the Office denied modification of its November 25, 1996 decision.¹

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical

¹ Following the Office's March 18, 1998 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁵

In this case, Dr. Allan D. Lieberman, a Board-certified pediatrician, supported appellant's continued disability and medical residuals due to her accepted condition in his June 25, 1994 report. He noted appellant's history of injury, as well as her medical treatment, and performed a physical examination. Dr. Lieberman diagnosed chronic toxic exposures to multiple petrochemicals including gasoline, diesel fuel, solvents, degreasers and other chemicals resulting in injury to and dysfunction of multiple organs and systems. He stated that there was a close association with appellant's workplace exposures and the causation of her injuries.

Dr. Lieberman stated that appellant continued to suffer residual affects of her exposure to chemicals at the employing establishment and that the nervous system damage caused by the exposures could be permanent. He stated that appellant could return to work in a chemically-free and safe working environment in a position, which suited her neurocognitive dysfunction and her fatigue level. Dr. Lieberman stated that appellant was currently exercising as a part of a prescribed plan for mobilization of chemicals from the fat deposits and that she was limited in doing these exercises by her fatigue. He concluded "[H]er performing exercises should in no way be interpreted to mean that she does not suffer from debilitating fatigue."

The Office referred appellant for a second opinion evaluation with Dr. Fredric Glass, a Board-certified preventive medicine specialist, on July 6, 1995. In a report dated August 16, 1995, Dr. Glass noted appellant's history of injury and diagnosed chronic fatigue, somatoform disorder and history of multiple chemical sensitivities syndrome. He stated, "I am unable to relate how symptoms are caused by workplace exposures based on conventional medical evidence." Dr. Glass noted that appellant was capable of clerical work but expected her complaints of fatigue would persist whether she was working or at home. He stated that he was unable to link appellant's problems solely to chemical exposures at work and that he believed that she had a "learned sickness behavior."

Appellant submitted a January 22, 1996 report from Dr. Lieberman, who stated that appellant had an environmentally triggered disease and diagnosed chronic fatigue immune dysfunction syndrome. Dr. Lieberman stated that appellant's treatment was correct. On February 28, 1996 Dr. Lieberman stated that appellant could not return to her date-of-injury position and that she was totally disabled. Dr. Lieberman added that if appellant were partially disabled she would have to return to an environment that was free of chemical exposures.

Section 8123(a) of the Federal Employees' Compensation Act⁶ provides, "If there is disagreement between the physician making the examination for the United States and the

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).

physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”

In this case, the Office properly found that there was a conflict of medical opinion evidence between appellant’s physician, Dr. Lieberman, who opined that appellant continued to have residuals of her employment injury and that she was totally disabled as a result of her employment-related exposure and Dr. Glass, the Office’s second opinion physician, who found that the conventional medical evidence did not support a causal relationship between appellant’s accepted employment exposure and her diagnosed conditions. Dr. Glass stated that appellant could return to work.

The Office properly referred appellant to Dr. Victor S. Roth, a Board-certified preventive medicine specialist of professorial rank, for an impartial medical evaluation. In his July 25, 1996 report, Dr. Roth noted that Dr. Lieberman’s specialty, environmental medicine, was not recognized by the American Board of Medical Specialties. Dr. Roth noted that several medical studies found that environmental medicine encouraged invalidism by creating iatrogenic (physician caused) disability. The World Health Organization recommended that multiple chemical sensitivity not be recognized as a clinically defined disease on the bases that there were neither accepted underlying mechanisms nor validated clinical criteria for diagnosis.

Dr. Roth reviewed appellant’s history of injury and stated that appellant was suffering from a variety of symptoms referable to several different organ systems. He stated that appellant’s symptom complex was not recognized as a clinically defined disease. Dr. Roth stated:

“There is also no scientific basis for claiming that any of the symptoms noted at this late date, several years after the last workday, are related to any exposures which occurred in the federal workplace. There are no objective findings and/or medical rationale, which would support occupation/work-related residuals.

“Though this claimant may indeed have a clinical illness, such an illness must be seen and evaluated on an individual organ system basis, that is gastroenterologic symptoms should be seen and evaluated by a gastroenterologist, etc.

“It is likely that such evaluations, conducted by conventional and accepted means, will prove unremarkable. This already has been shown to be the case in this claimant. Therefore, in my opinion, [appellant] should consider a neuro-psychiatric and/or psychiatric evaluation and ongoing treatment as soon as possible.

“This claimant does not suffer residuals related to work. There is no scientific basis, based on the occupational exposure noted, for this patient to suffer residuals as described, which could be considered work related.”

Dr. Roth concluded that appellant was physically capable of performing the duties listed for a modified tools and parts clerk, but that she was not psychologically prepared to return to

such a position as she “has been intensely influenced by her ‘environmental’ physicians that the workplace ... caused her alleged symptoms.”

In situations when there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist of the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

In this case, Dr. Roth’s report was based on a proper factual background as provided in the statement of accepted facts. He offered an opinion, based on medical findings from research articles and his own examination, that appellant’s symptoms did not support a diagnosable condition. He opined that her continuing physical condition was not related to her employment and stated that there were no objective findings or medical rationale to support the existence of work-related residuals from appellant’s exposure to toxic chemicals up to 1994. The Board finds that Dr. Roth’s opinion is sufficient to meet the Office’s burden of proof in terminating appellant’s compensation.

The March 18, 1998 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, DC
October 4, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁷ *Rosie E. Garner*, 48 ECAB 220, 225 (1996).